

SENATE/HOUSE FILE _____
BY (PROPOSED MENTAL HEALTH AND
DISABILITY SERVICES STUDY
COMMITTEE BILL)

A BILL FOR

1 An Act relating to persons with mental health illnesses and
2 substance-related disorders.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DRAFT

1 Section 1. Section 80B.11, subsection 1, paragraph c, Code
2 2011, is amended by adding the following new subparagraph:

3 NEW SUBPARAGRAPH. (3) In-service training under this
4 paragraph "c" shall include the requirement that all law
5 enforcement officers complete a twelve-hour course on
6 mental health first aid at least once every three years. In
7 developing the requirements for this training, the director
8 shall seek input from mental health care consumers.

9 Sec. 2. Section 125.91, subsection 1, Code Supplement 2011,
10 is amended to read as follows:

11 1. The procedure prescribed by this section shall only be
12 used for an intoxicated person who has threatened, attempted,
13 or inflicted physical self-harm or harm on another, and is
14 likely to inflict physical self-harm or harm on another unless
15 immediately detained, or who is incapacitated by a chemical
16 substance, ~~if that person cannot be taken into immediate~~
17 ~~custody under sections 125.75 and 125.81 because immediate~~
18 ~~access to the court is not possible~~ an application has not been
19 filed naming the person as the respondent pursuant to section
20 125.75 and the person cannot be ordered into immediate custody
21 and detained pursuant to section 125.81.

22 Sec. 3. Section 135C.4, Code 2011, is amended to read as
23 follows:

24 **135C.4 Residential care facilities.**

25 1. Each facility licensed as a residential care facility
26 shall provide an organized continuous twenty-four-hour program
27 of care commensurate with the needs of the residents of the
28 home and under the immediate direction of a person approved
29 and certified by the department whose combined training
30 and supervised experience is such as to ensure adequate and
31 competent care.

32 2. All admissions to residential care facilities shall be
33 based on an order written by a physician certifying that the
34 individual being admitted does not require nursing services or
35 that the individual's need for nursing services can be avoided

1 if home and community-based services, other than nursing care,
2 as defined by this chapter and departmental rule, are provided.

3 3. For the purposes of this section, the home and
4 community-based services to be provided shall be limited to the
5 type included under the medical assistance program provided
6 pursuant to chapter 249A, shall be subject to cost limitations
7 established by the department of human services under the
8 medical assistance program, and except as otherwise provided by
9 the department of inspections and appeals with the concurrence
10 of the department of human services, shall be limited in
11 capacity to the number of licensed residential care facilities
12 and the number of licensed residential care facility beds in
13 the state as of December 1, 2003.

14 4. A residential care facility is not required to admit
15 an individual through court order, referral, or other means
16 without the express prior approval of the executive director of
17 the residential care facility.

18 Sec. 4. Section 228.1, subsection 6, Code 2011, is amended
19 by striking the subsection and inserting in lieu thereof the
20 following:

21 6. "*Mental health professional*" means an individual who has
22 either of the following qualifications:

23 a. The individual meets all of the following requirements:

24 (1) The individual holds at least a master's degree in a
25 mental health field, including but not limited to psychology,
26 counseling and guidance, nursing, and social work, or is an
27 advanced registered nurse practitioner or a physician and
28 surgeon or an osteopathic physician and surgeon.

29 (2) The individual holds a current Iowa license if
30 practicing in a field covered by an Iowa licensure law.

31 (3) The individual has at least two years of post-degree
32 clinical experience, supervised by another mental health
33 professional, in assessing mental health needs and problems and
34 in providing appropriate mental health services.

35 b. The individual holds a current Iowa license if

1 practicing in a field covered by an Iowa licensure law and is
2 a psychiatrist, an advanced registered nurse practitioner who
3 holds a national certification in psychiatric mental health
4 care registered by the board of nursing, or an individual who
5 holds a doctorate degree in psychology and is licensed by the
6 board of psychology.

7 Sec. 5. Section 229.1, subsection 14, Code Supplement 2011,
8 is amended by striking the subsection.

9 Sec. 6. Section 229.1, subsection 16, Code Supplement 2011,
10 is amended to read as follows:

11 16. "*Serious emotional injury*" is an injury which does not
12 necessarily exhibit any physical characteristics, but which can
13 be recognized and diagnosed by a licensed physician ~~or other~~
14 ~~qualified mental health professional~~ and which can be causally
15 connected with the act or omission of a person who is, or is
16 alleged to be, mentally ill.

17 Sec. 7. NEW SECTION. **229.5A Preapplication screening**
18 **assessment — program.**

19 Prior to filing an application for involuntary
20 hospitalization pursuant to section 229.6, the clerk of
21 the district court or the clerk's designee shall inform
22 the interested person referred to in section 229.6,
23 subsection 1, about the option of requesting a preapplication
24 screening assessment through a preapplication screening
25 assessment program. The state court administrator shall
26 prescribe practices and procedures for implementation of the
27 preapplication screening assessment program.

28 Sec. 8. Section 229.6, Code 2011, is amended to read as
29 follows:

30 **229.6 Application for order of involuntary hospitalization.**

31 1. Proceedings for the involuntary hospitalization of an
32 individual may be commenced by any interested person by filing
33 a verified application with the clerk of the district court of
34 the county where the respondent is presently located, or which
35 is the respondent's place of residence. The clerk, or the

1 clerk's designee, shall assist the applicant in completing the
2 application. The application shall:

3 ~~1.~~ a. State the applicant's belief that the respondent is
4 seriously mentally impaired.

5 ~~2.~~ b. State any other pertinent facts.

6 ~~3.~~ c. Be accompanied by any of the following:

7 ~~a.~~ (1) A written statement of a licensed physician in
8 support of the application; ~~or.~~

9 ~~b.~~ (2) One or more supporting affidavits otherwise
10 corroborating the application; ~~or.~~

11 ~~c.~~ (3) Corroborative information obtained and reduced to
12 writing by the clerk or the clerk's designee, but only when
13 circumstances make it infeasible to comply with, or when the
14 clerk considers it appropriate to supplement the information
15 supplied pursuant to, either ~~paragraph "a" or paragraph "b" of~~
16 ~~this subsection~~ subparagraph (1) or (2).

17 2. Prior to the filing of an application pursuant to this
18 section, the clerk or the clerk's designee shall inform the
19 interested person referred to in subsection 1 about the option
20 of requesting a preapplication screening assessment pursuant
21 to section 229.5A.

22 Sec. 9. Section 229.10, subsection 1, paragraph b, Code
23 2011, is amended by striking the paragraph.

24 Sec. 10. Section 229.12, subsection 3, paragraph b, Code
25 2011, is amended to read as follows:

26 b. The licensed physician ~~or qualified mental health~~
27 ~~professional~~ who examined the respondent shall be present at
28 the hearing unless the court for good cause finds that the
29 licensed physician's ~~or qualified mental health professional's~~
30 presence or testimony is not necessary. The applicant,
31 respondent, and the respondent's attorney may waive the
32 presence or the telephonic appearance of the licensed physician
33 ~~or qualified mental health professional~~ who examined the
34 respondent and agree to submit as evidence the written
35 report of the licensed physician ~~or qualified mental health~~

1 ~~professional~~. The respondent's attorney shall inform the
2 court if the respondent's attorney reasonably believes that
3 the respondent, due to diminished capacity, cannot make an
4 adequately considered waiver decision. "Good cause" for finding
5 that the testimony of the licensed physician ~~or qualified~~
6 ~~mental health professional~~ who examined the respondent is not
7 necessary may include but is not limited to such a waiver.
8 If the court determines that the testimony of the licensed
9 physician ~~or qualified mental health professional~~ is necessary,
10 the court may allow the licensed physician ~~or the qualified~~
11 ~~mental health professional~~ to testify by telephone.

12 Sec. 11. Section 229.19, subsection 1, paragraph d, Code
13 2011, is amended by adding the following new subparagraph:

14 NEW SUBPARAGRAPH. (7) To utilize the related best practices
15 for the duties identified in this paragraph "d" developed and
16 promulgated by the judicial council.

17 Sec. 12. Section 229.19, subsection 1, Code 2011, is amended
18 by adding the following new paragraph:

19 NEW PARAGRAPH. e. An advocate may also be appointed
20 pursuant to this section for an individual who has
21 been diagnosed with a co-occurring mental illness and
22 substance-related disorder.

23 Sec. 13. Section 229.22, subsection 1, Code Supplement
24 2011, is amended to read as follows:

25 1. The procedure prescribed by this section shall ~~not~~ be
26 used ~~unless~~ when it appears that a person should be immediately
27 detained due to serious mental impairment, ~~but that person~~
28 ~~cannot be immediately detained by the procedure prescribed~~
29 ~~in sections 229.6 and 229.11 because there is no means of~~
30 ~~immediate access to the district court~~ an application has not
31 been filed naming the person as the respondent pursuant to
32 section 229.6, and the person cannot be ordered into immediate
33 custody and detained pursuant to section 229.11.

34 Sec. 14. Section 602.1209, Code 2011, is amended by adding
35 the following new subsection:

1 NEW SUBSECTION. 15A. Prescribe practices and procedures
2 for the implementation of the preapplication screening
3 assessment program referred to in section 229.5A.

4 Sec. 15. PATIENT ADVOCATE — STUDY. The office of
5 the citizens' aide shall conduct a study to determine the
6 feasibility of establishing an independent statewide patient
7 advocate program for qualified persons representing the
8 interests of patients suffering from a mental illness or
9 substance-related disorder and involuntarily hospitalized
10 or committed by the court, in any matter relating to the
11 patients' hospitalization or treatment under Code chapters
12 125 and 229. The office of the citizens' aide shall consider
13 the implementation of consistent reimbursement standards for
14 patient advocates supported by a state-funded system and
15 shall also consider the role of the advocate for a person who
16 has been diagnosed with a co-occurring mental illness and
17 substance-related disorder. The office of the citizens' aide
18 shall solicit input from current mental health advocates and
19 mental health and substance-related disorder care providers
20 and consumers and shall submit a report on the study and make
21 recommendations to the governor and the general assembly by
22 December 1, 2012.

23 Sec. 16. COMPREHENSIVE JAIL DIVERSION PROGRAM — MENTAL
24 HEALTH COURTS — STUDY. The division of criminal and juvenile
25 justice planning of the department of human rights shall
26 conduct a study regarding the possible establishment of a
27 comprehensive statewide jail diversion program, including the
28 establishment of mental health courts, for nonviolent criminal
29 offenders who suffer from mental illness. The division
30 shall solicit input from the department of human services,
31 the department of corrections, and other members of the
32 criminal justice system including but not limited to judges,
33 prosecutors, and defense counsel, and mental health treatment
34 providers and consumers. The division shall establish the
35 duties, scope, and membership of the study commission and shall

1 also consider the feasibility of establishing a demonstration
2 mental health court. The division shall submit a report on the
3 study and make recommendations to the governor and the general
4 assembly by December 1, 2012.

5 EXPLANATION

6 This bill relates to persons with mental health illnesses
7 and substance-related disorders.

8 MENTAL HEALTH TRAINING — LAW ENFORCEMENT. The bill
9 requires the director of the law enforcement academy, subject
10 to the approval of the Iowa law enforcement council, to adopt
11 rules relating to in-service mental health first-aid training
12 for law enforcement officers, with input from mental health
13 care consumers.

14 RESIDENTIAL CARE FACILITIES — ADMITTANCE. The bill
15 provides that a residential care facility is not required to
16 admit an individual through court order, referral, or other
17 means without the express prior approval of the executive
18 director of the residential care facility.

19 EMERGENCY DETENTION AND HOSPITALIZATION — PERSONS WITH
20 SUBSTANCE-RELATED DISORDERS AND MENTAL HEALTH ILLNESSES.
21 The bill amends Code sections 125.91 and 229.22 relating to
22 after-hours access to emergency detention and hospitalization
23 procedures for an intoxicated person who has threatened,
24 attempted, or inflicted physical self-harm or harm on another,
25 and is likely to inflict physical self-harm or harm on another
26 unless immediately detained, or who is incapacitated by a
27 chemical substance, or for a seriously mentally impaired
28 person. Current law provides for the immediate custody of such
29 persons in an emergency situation only after an application
30 for involuntary commitment or hospitalization has been filed,
31 which is an option only during regular court hours. The bill
32 amends the current emergency detention and hospitalization
33 procedures available for such persons to apply only when there
34 is no immediate access to the district court to allow access to
35 emergency detention and treatment services, at all times, even

1 if an application for involuntary commitment or hospitalization
2 has not been filed.

3 QUALIFIED MENTAL HEALTH PROFESSIONAL. The bill eliminates
4 the definition of "qualified mental health professional" in
5 Code chapter 229 (hospitalization of persons with mental
6 illness) and all references to this definition (talk about
7 where this are eliminated). The bill amends the definition of
8 "mental health professional" in Code chapter 228 (relating to
9 the disclosure of mental health and psychological information).

10 PREAPPLICATION SCREENING ASSESSMENT. The bill provides that
11 prior to filing an application for involuntary hospitalization
12 pursuant to Code section 229.6, the clerk of the district court
13 or the clerk's designee is required to inform the interested
14 person referred to in Code section 229.6, subsection 1,
15 about the option of requesting a preapplication screening
16 assessment through a preapplication screening assessment
17 program. The bill requires the state court administrator to
18 prescribe practices and procedures for implementation of the
19 preapplication screening assessment program.

20 A conforming change is made to Code section 229.6 requiring
21 the district court clerk or the clerk's designee to inform
22 the interested person about the option of requesting a
23 preapplication screening assessment of the proposed respondent
24 prior to the filing of an application for involuntary
25 commitment. A conforming change is also made to Code
26 section 602.1209 relating to the duties of the state court
27 administrator.

28 MENTAL HEALTH ADVOCATE. The bill provides that a mental
29 health advocate shall utilize the related best practices for
30 the mental health advocate's duties identified in Code section
31 229.19 developed and promulgated by the judicial council.
32 The bill allows a mental health advocate to be appointed by
33 the appropriate appointing authority for an individual who
34 has been diagnosed with a co-occurring mental illness and
35 substance-related disorder.

1 PATIENT ADVOCATE STUDY. The bill directs the office of the
2 citizens' aide to conduct a study to determine the feasibility
3 of establishing an independent statewide patient advocate
4 program for qualified persons representing the interests of
5 patients suffering from a mental illness or a substance-related
6 disorder and involuntarily hospitalized or committed by the
7 court, in any matter relating to the patients' hospitalization
8 or treatment under Code chapters 125 and 229. The office of
9 the citizens' aide shall also consider the role of the advocate
10 for a person who has been diagnosed with a co-occurring mental
11 illness and substance-related disorder, shall solicit input
12 from current mental health advocates and mental health and
13 substance-related disorder care providers and consumers, and
14 shall submit a report on the study and make recommendations to
15 the governor and the general assembly by December 1, 2012.

16 COMPREHENSIVE JAIL DIVERSION PROGRAM — MENTAL HEALTH
17 COURTS — STUDY. The bill directs the division of criminal and
18 juvenile justice planning of the department of human rights
19 to conduct a study regarding the possible establishment of a
20 comprehensive statewide jail diversion program, including the
21 establishment of mental health courts, for nonviolent criminal
22 offenders who suffer from mental illness. The division
23 shall solicit input from the department of human services,
24 the department of corrections, and other members of the
25 criminal justice system including but not limited to judges,
26 prosecutors, and defense counsel, and mental health treatment
27 providers and consumers. The division shall establish the
28 duties, scope, and membership of the study commission and shall
29 also consider the feasibility of establishing a demonstration
30 mental health court. The division shall submit a report on the
31 study and make recommendations to the governor and the general
32 assembly by December 1, 2012.